

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

THE STATE OF OREGON, by and  
through the OREGON STATE  
TREASURER on behalf of the  
OREGON PUBLIC EMPLOYEE  
RETIREMENT FUND,

CV-05-1434PK

OPINION AND ORDER

Plaintiff,

v.

MARSH & McLENNAN COMPANIES, INC.,  
MARSH, INC., JEFFREY GREENBERG, and  
RAY GROVES,

Defendants.

KING, Judge.

This case was originally filed in Multnomah County Circuit Court for the State of Oregon. Defendants filed a timely Notice of Removal to this court based on diversity of citizenship. On January 10, 2006, Magistrate Judge Paul Papak issued a Findings and Recommendation (doc. 57) that the case should be remanded to state court on the ground that this court lacks subject matter jurisdiction based on diversity. Magistrate Papak concluded that

the Oregon Public Employees Retirement Fund is an "arm" of the state of Oregon and, therefore, not a "citizen" for purposes of determining diversity jurisdiction. *See Mitchell v. Los Angeles Community College District*, 861 F.2d 198 (9<sup>th</sup> Cir. 1989)(an entity that is an "arm of state" is entitled to Eleventh Amendment immunity in federal court to the same extent as the state itself).

Defendants filed timely objections to Magistrate Papak's Findings and Recommendation. They assert this court should apply a *de novo* standard of review pursuant to 28 U.S.C. § 636(b)(1) because plaintiff's motion to remand is a dispositive motion. Plaintiff, however, asserts the motion to remand is a nondispositive motion and, therefore, this court should review the Findings and Recommendation to determine whether they are clearly erroneous or contrary to law. 28 U.S.C. § (b)(1)(A).

The parties agree the legal issues in this case are indistinguishable from the case of *State of Oregon v. Merck & Co., Inc.*, No. CV-05-1463-PK (D. Or. Jan. 6, 2006).<sup>1</sup> I review this matter to determine whether Magistrate Papak's Findings and Recommendation are clearly erroneous or contrary to law. For the same reasons stated in *Merck*, I conclude they are not.

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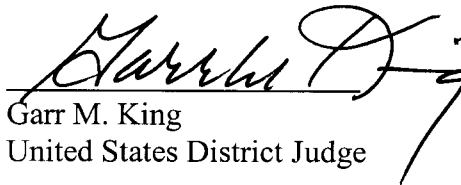
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<sup>1</sup> I note defendants cite an Oregon district court case, *King v. Aventis Pasteur, Inc.*, 210 F. Supp. 2d 1201, 1204 (D. Or. 2002), for the proposition that the court applies a *de novo* standard of review rather than a clearly erroneous or contrary to law standard. Although that case involved the review of a Magistrate Judge's Findings and Recommendation, it appears that the issue regarding the appropriate standard of review was not specifically addressed or analyzed by the court.

Accordingly, I **ADOPT** the Findings and Recommendation (doc. 57) of Magistrate Judge Paul Papak, and **ORDER** this matter remanded to the Circuit Court for the State of Oregon for the County of Multnomah.

IT IS SO ORDERED.

DATED this ~~Jan~~ 27<sup>th</sup> day of January, 2006.

  
Garr M. King  
United States District Judge